

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
EXP GROUP, LLC, INTERNATIONAL
FROZEN FOODS INC., INTERNATIONAL
TRAD AND MARKETING, INC.,

Plaintiffs,

- against -

MEGA TROPICAL PRODUCE INC.,
WASHINGTON NUNEZ a/k/a
WASHINGTON ANTONIAS, L.T.J.
IMPORTS INC., LORAIN RIVERA,
MIGUEL ARIAS, JK INTERNATIONAL
OF NY INC., a/k/a JK INTERNATIONAL
INC. a/k/a JK INTERNATIONAL, d/b/a
NUMERO UNO TROPICALES INC.,
and MARCELLO ALIO,

Defendants.
-----x

STATE OF NEW YORK }
 } ss.:
COUNTY OF NEW YORK }

CASE #: 07 CV 10611 (JSR)

AFFIDAVIT PURSUANT TO
ORDER DATED FEBRUARY 21, 2008

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: <u>2-26-08</u>

ANDREW SQUIRE, having been duly sworn deposes and says:

1. Having represented plaintiffs of record since the commencement of this case, I am fully familiar with the facts set forth herein.
2. I make this affidavit based upon my wish to proceed with the case, and, pursuant to the Order of this Court dated February 21, 2008 (Jed S. Raykoff, U.S.D.J.)
3. On February 7, 2008, I appeared on behalf of plaintiff before this Court at an initial status conference in the above captioned case.
4. During the conference I indicated that plaintiffs wished to make a motion for a default judgment because defendants had failed to appear or answer.

5. Accordingly, the Court directed me to make and serve the contemplated motion by February 15, 2008 and the Court set a return date and time for hearing the motion on February 21, 2008 at 9:00a.m. (as)
6. However, I failed to comply with the Court's directive by having neither made the motion nor did I appear in Court at the appointed date and time.
7. There is no excuse for my failure to comply with the directives of this Court and I take sole responsibility for noncompliance with the Court's directive.
8. I apologize for my failure to comply with the Court's directive.
9. Notwithstanding the foregoing, plaintiff and plaintiff's counsel do indeed wish to proceed with the case and, as such, request the Court to either grant a new Order or modify the above-mentioned Order as detailed in paragraph 18 of this affidavit.
10. In addition, I have an explanation for my above-described failure.
11. On the morning of February 7, 2008, I had three (3) landlord/tenant cases in Civil Court, the conference in this action and a meeting at Starbucks with co-counsel to review a motion for a case pending in Supreme Court.
12. After having left the Federal Court, I literally ran back to Civil Court to continue working on the landlord/tenant matters and when I finished there, then rushed to the meeting at Starbucks with co-counsel in connection with a case pending in Supreme Court.
13. As I was rushing from Court to Court, I forgot to transcribe the notes I had taken during the conference had in this action related to the service date and return date of plaintiff's proposed motion for default judgment.
14. Had I diaried the service dates and return dates of the motion I would have been reminded of the substance of the initial pre-trial conference and would have fully complied with the Court's directives.

directives.

15. Later that day, when I returned to my home office, I placed my file in my "active file" drawer instead of on my desk where I normally store files for which work had to be promptly undertaken.
16. Since I forgot to make the appropriate entries in my diary, I did not look at the relevant file until I received a copy of the said Court Order dated February 21, 2008, by fax.
17. The next day, I spoke with Chambers and stated that if the Court were to permit me to proceed with the case, I would be able to have the said motion with a return date of March 10, 2008 at 3:30p.m. served by no later than February 29, 2008.
18. Based upon the foregoing, for and on behalf of plaintiffs, I request that:
 - a. The Order of this Court dated February 21, 2008, is modified to the extent that this case is not dismissed provided and on condition that plaintiffs' motion for a default judgment is made and served by no later than February 29, 2008 with a return date and time for hearing the motion of March 10, 2008 at 3:30p.m.

State of New York
County of New York

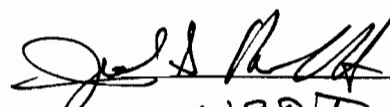
Sworn to before me this FEB 25 2008 day of 2008

Notary Public

LINDA MARENTES
Notary Public, State of New York
No. 01MA45081795
Qualified in Kings County
Commission Expires June 17, 2010

Andrew Squire

SO ORDERED


USDT
2-25-08